It is a general rule that rights in both realty and personalty are determined by the law of the *situs* at the time of the transaction. *Duncan* v. *Lawson*, 41 Ch. D. 394; *Cammell* v. *Sewell*, 5 H. & N. 728. In England this rule has been disregarded under facts similar to those in the principal case, and on the ground of an implied contract the law of the matrimonial domicile has been held to govern as to both personalty and realty. *De Nichols* v. *Curlier*, [1900] A. C. 21; *De Nichols* v. *Curlier*, [1900] 2 Ch. 410. But the American authorities support the principal case and repudiating the theory of an implied contract, properly determine by the law of the *situs* the passing of interests acquired after marriage. See *Saul* v. *His Creditors*, 5 Mart. N. S. (La.) 569. And even where the foreign law is adopted by an express antenuptial contract the courts hold it inapplicable to property subsequently acquired in another state. *Fuss* v. *Fuss*, 24 Wis. 256. But where the contract expressly states that the foreign law shall apply to property subsequently acquired elsewhere, it has been held to govern the distribution of personalty. *Decouche* v. *Savetier*, 3 Johns. Ch. 190. It is submitted that such a contract, although it creates an equitable right, should not affect the laws of another country regarding the title to or distribution of property subsequently acquired. See 13 HARV. L. REV. 601.

CONFLICT OF LAWS — SITUS OF CHOSES IN ACTION — FOREIGN BONDS HELD BY FOREIGNER DOMICILED ABROAD. — The testator, a domiciled American citizen, died in England, having with him at the time foreign government and railway bonds. *Held*, that these bonds have their *situs* in England and are liable to the estate duty. *Winans* v. *Att'y-Gen.*, 26 T. L. R. 133 (Eng., H. L., Dec. 7, 1909).

The English estate duty applies to all property situated in the kingdom at the death of the owner. A debt as such can have no real *situs*. As early as the sixteenth century, however, it was laid down in England that the *situs* of a specialty debt was with the specialty. *Byron* v. *Byron*, 1 Cro. Eliz. 472. In furtherance of this view the English courts have been inclined to hold that where a debt is evidenced by a document the transfer of which makes a good title, the latter is a valuable chattel subject to taxation where found. So American railway shares have been held subject to probate duty in England. *Baroness Stern* v. *The Queen*, [1896] 1 Q. B. 211. The same has been held as to foreign bonds, being securities marketable within the kingdom. *Att'y-Gen.* v. *Bouwens*, 4 M. & W. 171. And a recent case says such bonds are taxable on the same theory as bank-notes. See *Att'y-Gen.* v. *Glendining*, 92 L. T. R. 87. The present decision settles the English law wisely and is in accordance with our own mercantile understanding. See *Blackstone* v. *Miller*, 188 U. S. 189; 21 HARV. L. REV. 50.

DECEIT — GENERAL REQUISITES AND DEFENSES — REFRAINING FROM EXERCISING LEGAL RIGHT. — The defendant, intending to induce the plaintiff to refrain from demanding payment from their mutual debtor, falsely represented that the debtor was solvent. The plaintiff relied upon this misrepresentation, and by the time he discovered the actual facts, the debtor had no assets. The plaintiff sued for deceit. *Held*, that the plaintiff cannot recover, because he had no interest in the debtor's property and because his damages are problematical. *Graham* v. *Peale, Peacock, & Kerr*, 173 Fed. 9 (C. C. A., First Circ.).

A requisite to the maintenance of an action for deceit is that the plaintiff act upon the defendant's misrepresentation. *Smith* v. *Chadwick*, 20 Ch. D. 27, 44. To refrain from acting or from enforcing a legal right is, however, a sufficient act. *Fottler* v. *Moseley*, 179 Mass. 295; *Bowen* v. *Carter*, 124 Mass. 426. But in Massachusetts, where the present case arose, cases where a creditor, relying upon the defendant's misrepresentation, refrains from pressing his claim against his debtor have been confused with cases where the defendant has colluded with the debtor in conveying away his assets in fraud of creditors. See *Bradley* v. *Fuller*, 118 Mass. 239. In the latter, no recovery can be had unless the creditor

had a lien or other interest in the property. *Austin* v. *Barrows*, 41 Conn. 287; *Farmer* v. *Shannon*, 8 N. Y. St. Rep. 131; *Lamb* v. *Stone*, 11 Pick. (Mass.) 527. But in the former, it is enough that the creditor changed his position because of and relying on the misrepresentation. *Alexander* v. *Church*, 53 Conn. 561; *N. Y. Land Co.* v. *Chapman*, 118 N. Y. 288; *Fottler* v. *Moseley*, 185 Mass. 563. Failure to distinguish these two kinds of cases has led in the present case to the error which two neighboring states have avoided. See *Alexander* v. *Church*, *supra*; *N. Y. Land Co.* v. *Chapman*, *supra*. The difficulty of assessing damages is not a sufficient reason for refusing recovery in an otherwise good cause of action. It is for the jury to determine the damages, however difficult this may be. *Hunt Co.* v. *Boston Elevated Ry. Co.* 199 Mass. 220.

EQUITY — JURISDICTION — BILL BY ONE ON BEHALF OF MANY FOR DISTRIBUTION OF LIMITED FUND. — The plaintiff brought a bill on behalf of himself and all the other victims of embezzlement by X to recover against the surety on a bond given by X. The total amount alleged to be embezzled exceeded the penalty on the bond. *Held*, that the bill will lie. *Guffanti* v. *National Surety Co.*, 196 N. Y. 452.

The court rightly bases its decision on the jurisdiction of equity to administer a limited fund to which there are claims more than sufficient to exhaust the fund; or which will be dissipated if creditors having conflicting claims are restricted to their legal remedies. *Dimmick* v. *Register*, 92 Ala. 458; *National Park Bank* v. *Goddard*, 62 Hun (N. Y.) 31. It is upon this same principle that equity appoints receivers. KERR, RECEIVERS, Ch. I. The bill lies at the suit either of the claimants, or of the holder of the fund. *Dauler* v. *Hartley*, 178 Pa. St. 23; *American Surety Co.* v. *Lawrenceville Cement Co.*, 96 Fed. 25. It may also be brought, as in the principal case, by one claimant on behalf of himself and all others interested. *Crowell* v. *Cape Cod Ship Canal Co.*, 164 Mass. 235. In such a case, however, it must appear that the plaintiff is truly representative, and that the court can sufficiently protect those not made parties. *Smith* v. *Williams*, 116 Mass. 510. See 18 HARV. L. REV. 57. Where there are many non-resident claimants, courts sometimes refuse the bill. See *Smith* v. *Williams*, *supra*. The New York court, however, rightly decides that in the present case the existence of non-resident claimants, who may be excluded by an exhaustion of the fund through suits at law by those first learning of the embezzlement, is an argument for rather than against equitable interference.

EQUITY — JURISDICTION — UNFAIR COMPETITION. — A brought a bill in equity alleging that A, B, and C were competing expressmen; that D published a "Pathfinder" purporting to contain a full list of expressmen in that vicinity; that B and C by false statements and threats of injury to D's business induced him to omit any reference to A's business, thus damaging A. A therefore sought to have D enjoined from publishing the "Pathfinder" without A's name, and B and C from attempting to procure such publication. *Held*, that the bill is not demurrable. *Davis* v. *New England Railway Publishing Co.*, 89 N. E. 565 (Mass.).

The omission of the plaintiff's name from what purports to be a complete list of expressmen is equivalent to an assertion that he is not in the business. The Massachusetts court paid scant attention to the bearing on this case of the rule that equity will not enjoin a libel. The weight of American authority supports that rule, although it seems wrong on principle. See 16 HARV. L. REV. 67. But such a statement as this is not technically a libel, because it is not defamatory. Yet if consciously false, intended to damage and actually causing damage, it is actionable. *Ratcliffe* v. *Evans*, [1892] 2 Q. B. 524. Equity jurisdiction as to B and C may be based on the analogy of labor boycotts. The combination of B and C by threats to influence D's conduct, and through him the conduct of A's prospective customers toward A resembles a secondary rather than a primary boycott, and even without falsehood would probably be at least a *primâ facie*